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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

KENTAJA MADDEN,

Defendant and Appellant.

B205531

(Los Angeles County
Super. Ct. No. BA309528)

APPEAL from a judgment of the Superior Court of Los Angeles County,
William R. Pounders, Judge. Affirmed as modified.

Linn Davis, under appointment by the Court of Appeal, for Defendant and
Appellant.

Edmund G. Brown Jr., Attorney General, Dane R. Gillete, Chief Assistant
Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Stephanie C.
Brenan and Dana M. Ali, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

A jury convicted defendant and appellant Kentaja Madden of attempted willful and premeditated murder, shooting from a motor vehicle and assault with a firearm. The jury also found true gang enhancement allegations as to all counts. Based on those true findings, the trial court sentenced defendant on the attempted murder count to life with a 15-year minimum parole eligibility date, plus 25 years to life for a gun use enhancement. Defendant contends on appeal that the trial court's sentence with respect to the 15-year minimum parole eligibility date was unauthorized. We modify the judgment to correct a technical misstatement in the abstract of judgment, but we otherwise affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

I. Factual background.

A. *The shooting of John Jackson III.*

During the late evening of July 6, 2006, John Jackson III drove to the Somerset neighborhood in Los Angeles to pick up his brother, Fred. Fred was a gang member, but Jackson was not. Instead of leaving immediately with his brother, Jackson decided to stay and have a drink. While getting drinks, Jackson ran into defendant, whom he knew as "Mafia." Angrily she asked Jackson what he was doing there and whether he didn't " 'just get ran off the block last night?' " He replied, " 'Hell, no. You got me mixed up.' " Defendant called Jackson a "buster," someone who is a punk or weak. She told Jackson not to come back to the block and that she would "bust" on him—shoot him. Jackson told her, " 'I knock out Niggers and bitches,' " to which defendant replied, " 'What, Nigger, I'll bust on your ass right now.' "

Jackson asked Fred to straighten things out with defendant. Seeing a gun in defendant's pocket, Jackson apologized to defendant, saying she was his " 'Black sister, and I shouldn't talk to you like that[.]' " Jackson got into his car while Fred talked to defendant. When they finished talking, defendant went into the building to get her car. Jackson had previously seen defendant in a mid-size to small dark-colored car. As of the day of the shooting, a silver Chevy Impala was registered in defendant's name.

As Jackson was walking to his car, defendant drove by in her car. She stopped her car near Jackson, stood through the sun roof and shot at Jackson multiple times.¹ Injured, Jackson pushed himself between two cars. Defendant drove away, but not before throwing her gang sign. Jackson was paralyzed as a result of his gunshot injury.

On July 20, 2006, Jackson, who was still in the hospital, reviewed a photographic lineup. He identified a person in position No. 9, but he was not a 100 percent sure she was the shooter because he was taking morphine at the time he made the identification. The person in position No. 9 was not defendant, but he did give police a written statement that “ ‘Mafia’ ” shot him. Jackson reviewed another photographic lineup on August 9, 2006. He was no longer on morphine, but Dilantin. He identified defendant, and this time he was positive about the identification.

B. *Gang evidence.*

The Black P-Stone gang has approximately 700 documented members. The gang has common signs and symbols, including the one that defendant made with her hand after shooting Jackson. The gang’s territory includes the area in which Jackson was shot. Members of the Black P-Stone gang engage in murders, attempted murders, narcotic sales, firearm sales, robberies, witness intimidation, car thefts and vandalism. “JSB,” which stands for Jungle Stone Blood, is on defendant’s left shoulder. Defendant openly associated with members of the Black P-Stone gang.

In the opinion of Officer Paul Funicello, the People’s gang expert, the crime was committed for the benefit of the Black P-Stone gang.

II. Procedural background.

Trial was by jury. On December 14, 2007, the jury found defendant guilty of count 1, willful, deliberate and premeditated attempted murder (Pen. Code, §§ 187, 664, subd. (a));² count 2, shooting from a motor vehicle (§ 12034, subd. (c)); and count 3,

¹ Approximately seven bullet casings were found at the crime scene.

² All further undesignated statutory references are to the Penal Code.

assault with a semiautomatic firearm (§ 245, subd. (b)). As to counts 1 and 2, the jury found true gun use allegations under sections 1203.06, subdivision (a)(1); 12022.5, subdivision (a); and 12022.53, subdivisions (b), (c) and (d). The jury found true as to all counts gang allegations under section 186.22, subdivision (b)(1)(A).

On January 16, 2008, the trial court sentenced defendant to life on count 1 plus an additional 25 years to life on the gun enhancement under section 12022.53, subdivision (d). Under section 186.22, subdivision (b)(5), the court imposed a 15-year minimum parole eligibility date on the indeterminate term on count 1. The court imposed midterm sentences on counts 2 and 3 plus two 10-year terms under section 186.22, subdivision (b)(1), but stayed those sentences under section 654.

DISCUSSION

I. Sentencing on the gang enhancement allegations.

Defendant raises two issues concerning her sentence. First, the trial court had no authority to impose the 15-year minimum parole eligibility term under section 186.22, subdivision (b)(5), because that specific subdivision was not charged in the information. Second, defendant's 15-year minimum parole eligibility term and 25-years-to-life sentence on the gun enhancement cannot be "stacked" to provide for a 40-year-to-life sentence.

A. The 15-year minimum parole eligibility term.

Defendant's first contention is she is not subject to the 15-year minimum parole requirement in section 186.22, subdivision (b)(5), because the information did not contain an allegation under that specific subdivision. We disagree.

The purpose of an information is to advise the defendant of the charges so that the defendant has a reasonable opportunity to prepare and present a defense. (*People v. Valladoli* (1996) 13 Cal.4th 590, 607.) Where the information informs the defendant of the specific conduct alleged and the accused cannot show that preparation of his or her defense would have been altered absent the error, no modification of the judgment is required. (*People v. Neal* (1984) 159 Cal.App.3d 69, 72-73 [information alleged the use

of a deadly weapon (§ 12022, subd. (b)) during the commission of a sex offense; no error for the court to impose sentence pursuant to § 12022.3].)

The defendant here had adequate notice of the charges against her and of the specific sentence that might be sought in connection with the gang allegations. Specifically, defendant was charged in count 1 with attempted, willful, deliberate and premeditated murder in violation of sections 187, subdivision (a), and 664, subdivision (a). Section 664, subdivision (a), which was specifically alleged in the information, provides that attempted willful, deliberate and premeditated murder is punishable by imprisonment in state prison for life with the possibility of parole. Section 186.22, subdivision (b)(5)—which concededly was not specifically referenced in the information—provides that any person who commits a “felony punishable by imprisonment in the state prison for life shall not be paroled until a minimum of 15 calendar years have been served.”

That subdivision (b)(5) of section 186.22 was not specifically referenced in the information is of no moment. Defendant was on notice that she was facing, first, life with the possibility of parole on count 1, and, second, a minimum parole requirement on that life sentence. The first fact was made clear by the recitation to section 664, subdivision (a). The second fact was made clear by recitation to the gang statute. The information references section 186.22, subdivision (b)(1)(A), as to all three counts, and subdivision (b)(4)³ as to count 1. Subdivision (b)(1) of section 186.22 states: “*Except as provided in paragraphs (4) and (5), any person who is convicted of a felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang*

³ Subdivision (b)(4) of section 186.22 provides that any person convicted of certain enumerated felonies committed for the benefit of, at the direction of, or in association with a criminal street gang and with the specific intent to benefit that gang shall be sentenced to an indeterminate term of life imprisonment with a minimum term as set forth in greater detail. Defendant was not convicted of any felonies enumerated in paragraph (4), and it is therefore not applicable.

members, shall upon conviction of that felony” be punished as set forth in subparagraph (A), (B) or (C).⁴ (*Italics added.*) Thus, although the information did not separately reference subdivision (b)(5), it is referenced in subdivision (b)(1), which was alleged in the information.

Defendant, however, cites *People v. Mancebo* (2002) 27 Cal.4th 735, to show that subdivision (b)(5) of section 186.22 had to be expressly referenced in the information in order for her to be sentenced under it. In *Mancebo*, the information pleaded firearm use as a basis for a One Strike sentence under section 667.61. But the trial court substituted a multiple-victims circumstance as a basis for the section 667.61 enhancement. The Supreme Court reversed the sentence, finding that section 667.61 required the circumstance to be pled and to be proved. (*Id.* at pp. 743-744.) The court noted that section 667.61 expressly requires a circumstance to be pled. Defendant here points to no similar requirement in section 186.22 that subdivision (b)(5) be expressly pled before the 15-year minimum parole eligibility parole date may be imposed. In any event, as we have said, the language of subdivision (b)(1) was set forth in the information, and that subdivision specifically references subdivision (b)(5). Where, as here, “the information puts the defendant on notice that a sentence enhancement will be sought, and further notifies him of the facts supporting the alleged enhancement, modification of the judgment for a misstatement of the underlying enhancement statute is required only where the defendant has been misled to his prejudice.” (*People v. Neal, supra*, 159 Cal.App.3d 69.)

B. “*Stacking*” the 15-year minimum parole eligibility date with the 25 years to life for the firearm use.

Defendant next contends that imposition of the 15-year minimum parole eligibility term is unauthorized because her punishment for the criminal street gang enhancement should have been “subsumed” in the 25-years-to life term for the firearm enhancement.

⁴ Subparagraph (A) provides for “an additional term of two, three, or four years.” (§ 186.22, subd. (b)(1)(A).)

People v. Villegas (2001) 92 Cal.App.4th 1217, 1228-1229, rejects defendant's contention. There, as here, Villegas was convicted of willful, deliberate and premeditated attempted murder with true findings on a criminal-street-gang enhancement under section 186.22, subdivision (b), and a firearm enhancement under section 12022.53, subdivision (d). Villegas was sentenced to a life term, with a minimum eligible parole date of 15 years, plus an enhancement of 25 years to life. The court rejected Villegas's contention on appeal that the trial court "treated the sentencing prescription for the gang allegation in section 186.22, subdivision (b)(5), as a sentence *enhancement* by improperly adding a 15-year-to-life sentence to defendant's life term and [a] consecutive 25-year-to-life term for the gun use enhancement." (*Villegas*, at p. 1228.) The Court of Appeal said that because Villegas's underlying felony was punishable by a life term, his penalty for the criminal-street-gang enhancement was a minimum eligible parole date of 15 years, plus an additional and consecutive term of imprisonment in the state prison for 25 years to life under section 12022.53, subdivision (d). (*Villegas*, at p. 1229.) We agree with *Villegas* that the correct sentence is life with a minimum eligible parole date of 15 years plus an additional 25 years for the gun use enhancement.

Citing *People v. Jefferson* (1999) 21 Cal.4th 86, defendant takes issue with the characterization of the sentence as 40 years to life (the 15-year minimum plus the 25 years for the gun use enhancement). *Jefferson* states that the 15-year minimum term prescribed by section 186.22, subdivision (b)(5) is not a sentence enhancement, "because it is not an 'additional term of imprisonment' and it is not added to a 'base term.'" (*Id.* at p. 101.) In *People v. Montes* (2003) 31 Cal.4th 350, 361 at footnote 14, our California Supreme Court expressed no opinion on whether a gang-related attempted premeditated murder sentence under section 186.22, subdivision (b)(5), is properly characterized as a 15-year-to-life sentence that can be added to the 25-year-to-life sentence for the section 12022.53, subdivision (d) violation, resulting in a "40 years to life" sentence.

How to characterize the sentence has therefore not been decided by our Supreme Court. But we believe that the technically correct way to state defendant's sentence is life with a minimum parole eligibility term of 15 years, plus 25 years to life. It is unclear how the shorthand reference in the abstract of judgment to the term as 40 years to life in state prison prejudices defendant. Nonetheless, we will order the abstract of judgment to be modified to reflect that defendant's sentence is what we have technically stated here.

DISPOSITION

The abstract of judgment is modified to reflect that defendant's sentence on count 1 is life with a 15-year minimum parole eligibility date plus 25 years to life. The clerk of the Superior Court is ordered to forward the amended abstract of judgment to the Department of Corrections. The judgment is affirmed as modified.

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ALDRICH, J.

We concur:

KLEIN, P. J.

KITCHING, J.